

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USA

Document # \_\_\_\_\_

USCA NO. 08-4041-cr

SDNY NO. 07-cr-814

JUDGE: John Keenan

DATE: 8/27/08

-v-

Negbou

INDEX TO THE RECORD ON APPEAL

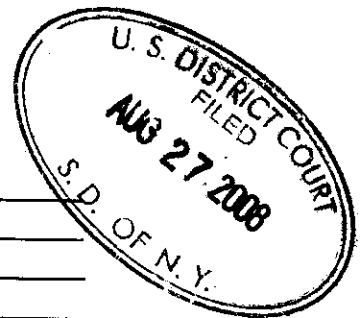
PREPARED BY (NAME) Kara Simpliciano

FIRM Linklaters LLP

ADDRESS 1345 Ave. of the Americas

New York, NY 10105

PHONE NO. 212-830-9508



DISTRICT COURT DOCKET ENTRIES -----

DOCUMENTS

DOC#

Clerk's Certificate

See Attached List of Numbered Documents

Only Circled Documents Included

(☒) Original Record

(☐) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.  
for the Second Circuit on the 27 Day of August, 2008.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

USA

U.S.C.A. # 08-4041-cr

U.S.D.C. # 07-cr-814

-v-

JUDGE: John Keenan

Nogbou

DATE: 08/27/08

**Clerk's Certificate**

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 44, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

<u>Date Filed</u>	<u>Document Description</u>
<u>10/04/2007</u>	<u>#7 CJA 20 Appointment of Attorney Alan M. Nelson for Rodolphe Nogbou</u>
<u>05/06/2008</u>	<u>#36 CJA 20 Appointment of Attorney Lance Robert Croftot-Surde for Rodolphe Nogbou</u>

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 27<sup>th</sup> Day of August In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 233<sup>RD</sup> year.

**J. Michael McMahon, Clerk**

By   
Deputy Clerk

APPEAL, CLOSED, ECF, PRIOR

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CRIMINAL DOCKET FOR CASE #: 1:07-cr-00814-JFK-1**  
**Internal Use Only**

Case title: USA v. Nogbou  
Magistrate judge case number: 1:07-mj-01392-UA

Date Filed: 08/29/2007  
Date Terminated: 08/14/2008

Date Filed	#	Docket Text
08/22/2007 ✓	①	COMPLAINT as to Rodolphe Nogbou (1) in violation of 18 U.S.C. 111(a). (Signed by Judge James C. Francis ) (gq) [1:07-mj-01392-UA] (Entered: 08/23/2007)
08/22/2007		Arrest of Rodolphe Nogbou. (gq) [1:07-mj-01392-UA] (Entered: 08/23/2007)
08/22/2007 ✓	②	CJA 23 Financial Affidavit by Rodolphe Nogbou. Approved. (Signed by Judge James C. Francis ) (gq) [1:07-mj-01392-UA] (Entered: 08/23/2007)
08/22/2007 ✓	③	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to Rodolphe Nogbou. Peggy Cross for Rodolphe Nogbou appointed. (Signed by Judge James C. Francis on 8/22/2007)(gq) [1:07-mj-01392-UA] (Entered: 08/23/2007)
08/22/2007 ✓	④	NOTICE OF ATTORNEY APPEARANCE: Peggy Cross appearing for Rodolphe Nogbou. (gq) [1:07-mj-01392-UA] (Entered: 08/23/2007)
08/22/2007		Minute Entry for proceedings held before Judge James C. Francis :Initial Appearance as to Rodolphe Nogbou held on 8/22/2007. Deft appears with Federal Defender atty Peggy Cross. AUSA John P. Cronan present for the gov't. Detention on consent without prejudice. Preliminary Examination set for 9/6/2007 at 10:00 AM before Judge Unassigned. (gq) [1:07-mj-01392-UA] (Entered: 08/23/2007)
08/29/2007 ✓	⑤	INDICTMENT FILED as to Rodolphe Nogbou (1) count(s) 1. (jm) (Entered: 08/30/2007)
08/29/2007		Case Designated ECF as to Rodolphe Nogbou. (jm) (Entered: 08/30/2007)
08/31/2007		Minute Entry for proceedings held before Judge John F. Keenan :Arraignment as to Rodolphe Nogbou (1) Count 1 held on 8/31/2007. Deft present with atty Peggy Cross. AUSA John Cronan present. Deft pleads not guilty. Next conference set for 9/27/07 at 12:00pm. T/E between 8/31/07 and 9/27/07. Deft detained. (jw) (Entered: 09/28/2007)
08/31/2007		Minute Entry for proceedings held before Judge John F. Keenan :Plea entered by Rodolphe Nogbou (1) Count 1 Not Guilty. (jw) (Entered: 09/28/2007)
08/31/2007		Minute Entry for proceedings held before Judge John F. Keenan : as to Rodolphe Nogbou; Pretrial Conference set for 9/27/2007 at 12:00 PM before Judge John F. Keenan. (jw) (Entered: 09/28/2007)
09/27/2007		Minute Entry for proceedings held before Judge John F. Keenan :Pretrial Conference as to Rodolphe Nogbou held on 9/27/2007, as to Rodolphe Nogbou; Pretrial Conference set for 10/4/2007 at 09:45 AM before Judge John F. Keenan. Deft present with atty Peggy Cross. AUSA Cronan present. PTC held. Next conference set for 10/4/07 at 9:45am. T/E between 9/27/07 and 10/4/07. Deft cont'd detained. (jw) (Entered: 09/28/2007)
10/04/2007 ✓	⑥	ORDER as to Rodolphe Nogbou. The Legal Aid atty assigned to this case Peggy Cross is hereby ordered substituted and the representation of the dft is assigned to CJA atty Alan Nelson. SO ORDERED. (Signed by Judge John F. Keenan on 10/4/07)(ja) (Entered: 10/05/2007)
10/04/2007		Attorney update in case as to Rodolphe Nogbou. Attorney Alan M. Nelson for Rodolphe Nogbou added. Attorney Peggy M. Cross terminated. (ja) (Entered: 10/05/2007)
10/04/2007		Minute Entry for proceedings held before Judge John F. Keenan :Pretrial Conference as to Rodolphe Nogbou held on 10/4/2007. Dft present with atty. CJA Alan Nelson (Legal Aid atty Peggy Cross is relieved). AUSA John Cronan present. Bail application hearing held. Application denied. Next conference set for 10/25/2007 at 9:30 a.m. Time excluded between 10/4/2007 and 10/25/2007. Dft continued detained. (jar) (Entered: 10/05/2007)
10/04/2007 X	7	CJA 20 as to Rodolphe Nogbou: Appointment of Attorney Alan M. Nelson for Rodolphe Nogbou. (Signed by Judge John F. Keenan on 10/04/07) CJA Office Mailed the Original to Attorney, and Sent Copy to File.(sac) (Entered: 10/22/2007)
10/25/2007 ✓	⑧	PROTECTIVE ORDER as to Rodolphe Nogbou. It is hereby ORDERED that the Post Order for Federal Courthouse Complex Internal Security, CSO Post 4, Worth Street, for the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York (the "Post Order"), which is to be produced in discovery by the Government, may only be viewed by Alan Nelson, Esq., counsel for the defendant, and persons working under his direction and supervision for the purpose of assisting him in the defense of this matter (collectively, the "Defense Team"); and it is further ORDERED that the Defense Team shall not duplicate or distribute the Post Order to any other person; and it is further ORDERED that no person other than a member of the Defense Team shall be allowed to examine the Post Order without further order of this Court;

		and it is further ORDERED that the Post Order may not be connected, downloaded or transferred to the Internet and may not be placed into any computer that is connected to the Internet; and it is further ORDERED that the Defense Team shall return all copies of the Post Order to the Government at the conclusion of this case. (Signed by Judge John F. Keenan on 10/25/07)(bw) (Entered: 10/25/2007)
10/25/2007		Minute Entry for proceedings held before Judge John F. Keenan :Pretrial Conference as to Rodolphe Nogbou held on 10/25/2007. Dft Rodolphe Nogbou pres w/atty Alan Nelson. AUSA John Cronan pres. Defense Motions due by 11/5/2007. Govt's Response due by 11/13/2007. Next Pretrial Conference set for 11/19/2007 at 03:30 PM before Judge John F. Keenan. T/E between 10/25/07 and 11/19/07. Dft cont'd detained. (ja) (Entered: 10/29/2007)
10/28/2007	9	MOTION for Discovery <i>Motion for discovery, Motion in Limine and Request for Rule 17(c) Subpoena</i> . Document filed by Rodolphe Nogbou. Return Date set for 11/19/2007 at 03:00 PM. (Nelson, Alan) (Entered: 10/28/2007)
11/06/2007	10	TRANSCRIPT of Proceedings as to Rodolphe Nogbou held on 8/31/07 before Judge John F. Keenan. (pl) (Entered: 11/06/2007)
11/13/2007	11	MEMORANDUM in Opposition by USA as to Rodolphe Nogbou re 9 MOTION for Discovery <i>Motion for discovery, Motion in Limine and Request for Rule 17(c) Subpoena</i> . (Cronan, John) (Entered: 11/13/2007)
11/13/2007	12	Certificate of Service of 11 Memorandum in Opposition to Motion by USA as to Rodolphe Nogbou. Document was served on Defendant Rodolphe Nogbou on November 13, 2007. Service was made by Federal Express. (Cronan, John) (Entered: 11/13/2007)
11/19/2007	13	MEMORANDUM OPINION & ORDER as to Rodolphe Nogbou....[See Order]... Conclusion: For the foregoing reasons, it is hereby ORDERED that: (i) The Govt shall submit Esposito's CSO personnel file to the Court for in camera inspection no later than 11/30/07; (ii) The Govt is precluded from cross-examining Defendant regarding the fact or underlying circumstances of his 2/22/07 conviction for disorderly conduct; and (iii) The Govt is directed to ascertain of CSO Esposito whether he was formerly employed by the NYSD or any other state policy agency and inform the Court accordingly, no later than 11/30/07. (Signed by Judge John F. Keenan on 11/19/07)(bw) (Entered: 11/19/2007)
11/19/2007		Minute Entry for proceedings held before Judge John F. Keenan:Pretrial Conference as to Rodolphe Nogbou held on 11/19/2007, as to Rodolphe Nogbou( Pretrial Conference set for 12/19/2007 at 09:45 AM before Judge John F. Keenan., Jury Trial set for 1/7/2008 at 10:00 AM before Judge John F. Keenan.) Deft present with atty Alan Nelson. AUSA Cronan present. PTC held. Next conference set for 12/19/07 at 9:45am. Trial date set for 1/7/08 at 10:00am. T/E between 11/19/07 and 12/19/07. Deft cont'd detained. (jw) (Entered: 11/27/2007)
12/03/2007	14	ORDER as to Rodolphe Nogbou. Purs to the court's Memorandum Opinion and Order dtd 11/19/07, the govt has submitted to the court for in camera review the personal file of court security officer Vincent Esposito. After carefully reviewing the file, I have determined that it contains no material that must be disclosed at this time to the defense as indicated. So Ordered (See attached order for full text) (Signed by Judge John F. Keenan on 12/3/07)(pr) (Entered: 12/04/2007)
12/07/2007	16	ORDER as to Rodolphe Nogbou. On 12/4/07, purs to the Court's Memorandum Opinion and Order, dtd 11/19/07, the govt submitted to the court for incamera review additional documentation from the personal file of CSO Vincent Esposito. After carefully reviewing the documentation I have determined that i contains no material that must be disclosed at this time to the defense. The documentation will be filed under seal. The govt has stated that CSO Esposito was formerly employed by the NYPD, from which he retired as Detective First Grade. So Ordered. (See attached order for full text) (Signed by Judge John F. Keenan on 12/7/07)(pr) (Entered: 12/10/2007)
12/19/2007	18	ORDER Authorizing Funds Pursuant To The Criminal Justict Act as to Rodolphe Nogbou.... it is hereby: ORDERED, that the deft's assigned attorney, Alan M. Nelson, is authorized to extend the use of the services of VidiPax, LLC for the purpose of cleaning and enhancing a Video recording derived from the surveillance video camera located at the Worth Street entrance to the Federal Courthouse located at 500 Pearl Street made on 8/22/07 between 12:00-12:20 P.M. ORDERED that the reasonable and proper expenses incurred for the services, as aforesaid shall be paid on half out of the funds provided for these purposes under the Criminal Justict Act, the second half to be paid by the U.S. Attorney's Office for the S.D.N.Y. The total cost of the work to be performed being \$7,156.00; the sum authorized to be paid pursuant to CJA Act \$3,578.00. (Signed by Judge John F. Keenan on 12/19/07)(bw) (Entered: 12/19/2007)
12/19/2007	19	AFFIDAVIT of Alan M. Nelson, Esq. In Support of Request for funds pursuant to the Criminal Justice Act. Document filed by Rodolphe Nogbou. (bw) (Entered: 12/19/2007)
12/19/2007		Minute Entry for proceedings held before Judge John F. Keenan:Pretrial Conference as to Rodolphe Nogbou held on 12/19/2007, as to Rodolphe Nogbou( Jury Trial set for 1/7/2008 at 10:00 AM before Judge John F. Keenan.). Deft present with atty Alan Nelson. AUSA Cronan present. PTC held. Trial date remains 1/7/08 at 10:00am. T/E between 12/19/07 and 1/7/08. Deft cont'd detained. (jw) (Entered: 12/20/2007)
12/31/2007	20	Request To Charge by Rodolphe Nogbou. (Nelson, Alan) (Entered: 12/31/2007)
01/02/2008	21	ORDER AUTHORIZING CLOTHING TO BE PROVIDED TO INMATE FOR TRIAL as to Rodolphe Nogbou. ORDERED, that the defendant's assigned attorney, Alan M. Nelson, is authorized to bring civilian clothing, including, a pair of slacks, 2 shirts, a tie and shoes for the purpose of the defendant having clothing to wear at his trial into the Metropolitan Detention Center. SO ORDERED. (Signed by Judge John F. Keenan on 1/2/08)(jw) (Entered: 01/02/2008)
01/03/2008	22	PROPOSED EXAMINATION OF JURORS by USA as to Rodolphe Nogbou. (Cronan, John) (Entered: 01/03/2008)
01/03/2008	23	Certificate of Service of 22 Proposed Examination of Jurors by USA as to Rodolphe Nogbou. Document was served on defendant Rodolphe Nogbou on 1/3/08. Service was made by Federal Express. (Cronan, John) (Entered: 01/03/2008)

01/03/2008	24	Proposed Jury Instructions by USA as to Rodolphe Nogbou. (Cronan, John) (Entered: 01/03/2008)
01/03/2008	25	Certificate of Service of 24 Proposed Jury Instructions by USA as to Rodolphe Nogbou. Document was served on Defendant Rodolphe Nogbou on 1/3/08. Service was made by Federal Express. (Cronan, John) (Entered: 01/03/2008)
01/07/2008		Minute Entry for proceedings held before Judge John F. Keenan:Vair Dire begun on 1/7/2008 Rodolphe Nogbou (1) on Count 1. Deft present with atty Alan Nelson. AUSA John Cronan present. Jury trial begins. Trial to continue on 1/8/08. Deft cont'd detained. (jw) (Entered: 01/14/2008)
01/07/2008		Jury Impaneled as to Rodolphe Nogbou. (jw) (Entered: 01/14/2008)
01/08/2008		Minute Entry for proceedings held before Judge John F. Keenan:Jury Trial as to Rodolphe Nogbou held on 1/8/2008 (jw) (Entered: 01/14/2008)
01/09/2008		Minute Entry for proceedings held before Judge John F. Keenan:Jury Trial as to Rodolphe Nogbou held on 1/9/2008 (jw) (Entered: 01/14/2008)
01/10/2008		Minute Entry for proceedings held before Judge John F. Keenan:Jury Trial as to Rodolphe Nogbou held on 1/10/2008. Trial cont'd. Jury deliberations begin. (jw) (Entered: 01/14/2008)
01/11/2008	26	Request To Charge by Rodolphe Nogbou. (jw) (Entered: 01/14/2008)
01/11/2008	27	Proposed Jury Instructions by USA as to Rodolphe Nogbou. (jw) (Entered: 01/14/2008)
01/11/2008	28	Request To Charge by USA as to Rodolphe Nogbou. (jw) (Entered: 01/14/2008)
01/11/2008		Minute Entry for proceedings held before Judge John F. Keenan:Jury Trial as to Rodolphe Nogbou held on 1/11/2008. Trial cont'd. Jury deliberations continue and conclude. Jury finds deft guilty on count one (assault; physical contact, no bodily injury). PSI ordered. Sentencing date set for 4/16/08 at 10:00am. Deft cont'd detained. (jw) (Entered: 01/14/2008)
01/11/2008		JURY VERDICT as to Rodolphe Nogbou (1) Guilty on Count 1. (jw) (Entered: 01/14/2008)
01/11/2008		Order of Referral to Probation for Presentence Investigation and Report as to Rodolphe Nogbou. (Signed by Judge John F. Keenan on 1/11/08)(jw) (Entered: 01/14/2008)
01/11/2008		Minute Entry for proceedings held before Judge John F. Keenan: as to Rodolphe Nogbou; Sentencing set for 4/16/2008 at 10:00 AM before Judge John F. Keenan. (jw) (Entered: 01/14/2008)
01/11/2008	29	Court Exhibit #1 (Rodolphe Nogbou's Request to Charge), as to Rodolphe Nogbou. (ja) (Entered: 01/15/2008)
01/24/2008	30	TRANSCRIPT of Proceedings as to Rodolphe Nogbou held on 10/25/07 before Judge John F. Keenan. (es) (Entered: 01/24/2008)
02/21/2008	31	TRANSCRIPT of Proceedings as to Rodolphe Nogbou held on 1/7, 1/8, 1/9, 1/10, 1/11, 2008 before Judge John F. Keenan. (jbe) (Entered: 02/21/2008)
04/07/2008	32	SENTENCING MEMORANDUM by Rodolphe Nogbou. (Nelson, Alan) (Entered: 04/07/2008)
04/10/2008	33	SENTENCING MEMORANDUM by USA as to Rodolphe Nogbou. (Cronan, John) (Entered: 04/10/2008)
04/12/2008	34	SENTENCING MEMORANDUM by Rodolphe Nogbou. (Nelson, Alan) (Entered: 04/12/2008)
05/06/2008		Minute Entry for proceedings held before Judge John F. Keenan:Status Conference as to Rodolphe Nogbou held on 5/6/2008 as to Rodolphe Nogbou( Sentencing set for 8/13/2008 at 10:00 AM before Judge John F. Keenan.)Deft present with atty Alan Nelson. AUSA Cronan present. CJA Nelson is ordered substituted and CJA Lance Croffott-Suede is assigned to represent the deft. Sentencing is adjourned to August 13, 2008 at 10:00am. Deft cont'd detained. (jw) (Entered: 05/07/2008)
05/06/2008	36	CJA 20 as to Rodolphe Nogbou: Appointment of Attorney Lance Robert Croffott-Suede for Rodolphe Nogbou. (Signed by Judge John F. Keenan on 5/6/08) CJA Office has mailed the original and sent a copy to the file.(sac) (Entered: 05/15/2008)
05/07/2008	35	ORDER as to Rodolphe Nogbou. The C.J.A. attorney assigned to this case, Alan Nelson is hereby ordered substituted and the representation of the defendant in the above captioned matter is assigned to Lance Croffott-Suede. (Signed by Judge John F. Keenan on 5/6/08)(bw) (Entered: 05/07/2008)
05/07/2008		Attorney update in case as to Rodolphe Nogbou. Attorney Alan M. Nelson and Alan Mitchel Nelson terminated. (bw) (Entered: 05/07/2008)
05/19/2008	37	TRANSCRIPT of Proceedings as to Rodolphe Nogbou held on 5/06/2008 before Judge John F. Keenan. (ama) (Entered: 05/19/2008)
07/03/2008	38	ORDER as to Rodolphe Nogbou as to Rodolphe Nogbou( Sentencing set for 8/14/2008 at 09:45 AM in Courtroom 20-C before Judge John F. Keenan.) (Signed by Judge John F. Keenan on 7/3/08)(jw) (Entered: 07/03/2008)
08/06/2008	39	SENTENCING MEMORANDUM by Rodolphe Nogbou. (Attachments: # 1 Appendix Certificate of Service)(Croffott-Suede, Lance) (Entered: 08/06/2008)
08/08/2008	40	SENTENCING MEMORANDUM by USA as to Rodolphe Nogbou. (Attachments: # 1 Exhibit A)(Cronan, John) (Entered: 08/08/2008)
08/13/2008	41	REPLY MEMORANDUM OF LAW by Rodolphe Nogbou re: 40 Sentencing Memorandum filed by USA. (Attachments: # 1 Appendix Certificate of Service)(Croffott-Suede, Lance) (Entered: 08/13/2008)

08/14/2008		Minute Entry for proceedings held before Judge John F. Keenan: Sentencing held on 8/14/2008 for Rodolphe Nogbou (1) Count 1. [See Judgment filed on 8/14/08] (bw) (Entered: 08/15/2008)
08/14/2008	✓ (42)	JUDGMENT In A Criminal Case. Date of Imposition of Judgment: 8/14/08. Defendant Rodolphe Nogbou (1) was found guilty on Count(s) 1 after a plea of not guilty. Imprisonment: 24 Months. The defendant is remanded to the custody of the United States Marshal. Supervised Release: 3 Years. Special Condition: The defendant shall obey the immigration laws and comply with the directives of immigration authorities. The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. The defendant shall cooperate in the collection of DNA as directed by the probation officer. Assessment: \$100, due immediately. (Signed by Judge John F. Keenan on 8/14/08)(bw) (Entered: 08/15/2008)
08/14/2008		Judgment entered in money judgment book as #08,1471 as to Rodolphe Nogbou in the amount of \$ 100.00, re: 42 Judgment. (dt) (Entered: 08/18/2008)
08/15/2008	✓ (43)	NOTICE OF APPEAL by Rodolphe Nogbou from 42 Judgment. (NoA filed by CJA appointed attorney). (nd) (Entered: 08/18/2008)
08/18/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Rodolphe Nogbou to US Court of Appeals re: 43 Notice of Appeal - Final Judgment. (nd) (Entered: 08/18/2008)
08/18/2008	✓ (44)	ORDER as to Rodolphe Nogbou. IT IS HEREBY ORDERED that the Metropolitan Correctional Center, and its employees and officers, shall permit defendant Rodolphe Nogbou to submit papers in any civil cases in which he is a party pending in this District to the Honorable Robert W. Sweet, U.S.D.J. for the S.D.N.Y. (Signed by Judge John F. Keenan on 8/18/08)(bw) (Entered: 08/18/2008)
08/20/2008		USCA SCHEDULING ORDER as to Rodolphe Nogbou related to 43 Notice of Appeal - Final Judgment filed by Rodolphe Nogbou, USCA Case Number 08-4041-cr. Defendant Brief due by 10/9/2008. Government Brief due by 11/10/2008. Appeal Record due by 9/9/2008. (nd) (Entered: 08/21/2008)